THE MADISONIAN.

THOMAS ALLEN. EDITOR AND PROPRIETOR.

TERMS: Yearly Subscription......\$3 00 Six months...... 2 00

We commenced on Saturday last the publication of a weekly edition of the Madisonian, and shall issue the second number to-day. This edition will comprise a condensed report of the daily proceedings of both Houses of Congress, with all the editorial matter and much other political, statistical, financial, and miscellaneous reading comprised in the edition published every other day—filling the four sides of the sheet with reading matter, of an interesting and valuable character. ing matter, of an interesting and valuable character. This will prove a valuable acquisition, we flatter ourself, to all who would supply themselves with general information from the Capitol of the United States, in a cheap and convenient form, accessible to all. The present solitical accession sent political period is an interesting and important one, and cannot fail to excite the attention of every one who seeks to be informed upon matters of general con-

The price for-the Madisonian, weekly, one year, is \$3, payable invariably in advance. December 16, 1837.

UNITED STATES HOTEL, (late Holt's.)—New York City.—This splendid establishment will be reopened on the 15th of January, under the charge of the

Situated at the junction of Fulton with Pearl and Water streets, it offers every inducement to the merchant and man of business. Commodious private parlors, with bed rooms attached, are handsomely furnished and fitted up for family parties, and the subscriber flatters himself that the improvements recently made will render the Hotel an eligible resort for citizens and strangers. The Bar will be furnished with every variety of liquors, carefully selected, and the Table supplied with all the luxuries of the season. It will be the ambition of the subscriber to renderthe Hotel equal to any, and he pledges himself that no exertions or expense shall be spared to merit a share of patronage and give satisfaction to the public.

The House will be open for the reception of company at all hours.

TO PARENTS AND TEACHERS...At a meeting on Education in the "Hall of Representatives" at Washington, held Dec. 13, the following resolution was

Resolved, That this meeting consider the School Book, called "Town's Spelling Book," an original work of great importance, as it teaches the child the meaning of words, and at the same time their spelling is learned, and that we do strongly recommend its use in all our schools. dec 15-d&c3m

ON INTERNAL IMPROVEMENTS

SPEECH OF MR. RIVES. OF VIRGINIA.

On the Bill for obtaining the necessary Surveys on the subject of Roads and Canals. IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 3, 1824. Mr. RIVES said, if the importance of any question can give it a claim to attention, none is more worthy of profound consideration, than the one now under discussion. It is, in the first place, a question of constiprofound consideration, than the one now under discussion. It is, in the first place, a question of constitutional right, involving the true interpretation of that
instrument, from which we derive our existence as an
independent member of the government, and to which
we are bound, by the highest obligations, to conform
our legislative conduct. But this, although the most
important aspect which any subject can assume, under
a limited constitution, is not the only interest which belongs to the present question. Its decision must have
a pervading influence upon the future policy of the
country. If that decision should be in favor of the
power contended for by the advocates of the bill, it will
become the foundation of a system of legislation which come the foundation of a system of legislation which I cannot regard otherwise than as inauspicious to the liberties and dangerous to the best interests of the nation. Under these impressions, incompetent as I am to do justice to the subject, or in any degree to match the ability which has been so conspicuously exhibited in its discussion, I am yet urged by a sense of duty, to contribute the small mite of my humble exertions in defence of what I deem the cause of the constitution, and the principles of sound policy. I am aware, Mr. Chair-man, that, in investigations of this sort, general reasonings from the spirit of the constitution are not absolutely conclusive. The ultimate inquiry must be, what the framers of the constitution have done, as evidenced by the instrument is off, where there where they intended to do. But if we can ascertain what was the leading intention by which they were guided, in organizing the powers of the Government, a strong presumption arises that they have done nothing inconsistent with that intention. What, then, permit me to ask, was the cardinal principle, which directed the convention in the execution of their great work? It was this: to transfer to the care of the General Government those objects only in which all the States have a common in-terest, leaving those in which the States have separate terest, leaving those in which the States have separate and peculiar interests to be provided for by their own domestic governments; and this rule applies alike to every species of federal power, whether it be external or municipal. In pursuance of this principle, the General Government was charged with the question of peace or war, the regulation of commerce, the conduct of negotiations, and the various other objects connected with our foreign relations. In these, all the States have but one interest, and that, emphatically, a national interest. So, likewise, with regard to that class of powers granted to Congress, which operate internally, such as the to Congress, which operate internally, such as the powers to establish uniform laws on the subject of bankruptcy, to organize a federal judiciary, to establish regulate the national currency. All the States stand precisely in the same relation to these powers, and are affected in the same manner, by the exercise of them in their social and civil transactions. But this is not, and cannot be the case with internal improvements. They affect parts, and not the whole, of the confederacy They are, from a physical necessity, local in their situation and local in their influence and their benefits -Take the most extended object of internal improvement, the projected road, for example, from Maine New Orleans, or, if you please, the navigation of the waters of the Mississippi, in which the honorable Speaker has said twelve States and two Territories are interested, still, comprehensive and important as these schemes of improvement undoubtedly are, they are limited, in their advantages, to particular States, and are, therefore, not such objects of common interest to all the States, as the constitution intended to transfer to the General Government. But, here we are met by the argument of the hono-

rable Speaker, Mr. CLAY, that there is an intermediate class of objects, affecting more than one State, and yet not extending to all the States, which require the united means of a confederacy to execute them, and the only confederacy which can now legitimately exist for such a purpose, is that of the Union; because the constitution prohibits one State from entering into compacts or agreements with another State. The honorable gentleman will excuse me for saying that this argument is founded on a mistake of the actual provisions of the pacts between the States, but merely restrains the States from entering into such compacts, without the consent of Congress. The consent of Congress is required, as a necessary check to prevent the States from forming combinations hostile to the Union, or dangerous to it peace and safety; but, where any number of the States desire to enter into arrangements with each other, for the accomplishment of some beneficial object, in which they have a common interest, it never could have been sed or intended, that the consent of Congress supposed or intended, that the consent of Congress would be withheld. The States, in such cases, are still left at liberty to unite their resources, by entering into compacts with each other, subject only to the reasonable control of Congress; and this privilege was no doubt reserved to them with an express view to the very class of objects now in question, which concern two or ess such a character of universal national interest as to bring them within the legitimate sphere of the govern-

The honorable Speaker, in the course of his argument, laid down a position, which he seemed to con der entirely decisive of the present question. Adverting to the distinction between the articles of confederaon and our present constitution, and remarking that, under the former, the General Government, in its most rtant functions, operated upon the States, under the latter, that it acts directly upon the individuals who compose those States, he deduced, as a general who compose those States, he deduced, as a general principle, that the Government of the Union, as now organized, is wholly independent of the States for the execution of any of its powers. So far is this from being correct, in the broad extent assumed by the honorable Speaker, that I have always supposed directly the contrary; that the General Government is dependant upon the States for the execution of All its reverse for its upon the States for the execution of all its powers, for it cannot exist, without the concurrence of the States.— Are not your Senators, who compose the other branch of the legislative department of this Government, elected by the Legislatures of the States? Is not your Executive Magistrate chosen, also, by the agency, and under the direction, of the State Legislatures?

THE MADISONIAN.

FOR THE COUNTRY.

VOL. II....NO. 8.

WASHINGTON CITY, SATURDAY EVENING, FEBRUARY 2, 1839.

WHOLE NO. 60.

[Here Mr. CLAY explained. He said he never contended that, if a majority of the States withheld their co-operation, the General Government might not be dissolved; but, his principle was, when the General Government is once organized, and moves, it moves by its own inherent energy, and acts independently of State

Mr. Rives said, he had not the pleasure of hearing Mr. Rives said, he had not the pleasure of hearing the speech of the honorable gentleman. He had only read the report of it given in the newspapers, and he thought that the principle to which he had referred, as stated in that report, required some qualification. But, even as now qualified, by the explanations of the Speaker, he was not prepared to give his assent to it. I understand the honorable Speaker, said Mr. Rives, now to say, that although the General Government does depend upon the States for its existence, yet, in the ordinary and regular exercise of its vested powers, it is wholly independent of the aid and co-operation of the State Governments. I have always entertained, said Mr. R., a different opinion of our political system, and for that opinion I supposed I had the sanction of high authority. The authors of "The Federalist," in various passages of their celebrated work, speak of the State Governments as incorporated into the system of the General Government, as auxiliary to its operations, and indeed as indis-pensable to its maintenance. In one passage, they say emphatically, if the General Government should ever arbitrarily abolish the State Governments, it would be arbitrarily abolish the State Governments, it would be compelled, by the principle of self-preservation, to reinstate them—implying, as it seems to me, in the strongest manner, the dependence of the General Governments upon the aid and co-operation of the State Governments. But let us examine this subject more minutely, in reference to some of the powers of the General Governments. In the exercise of its military power, which has been so much talked of in the course of this discussion there not a partial dependence, at least, of the Gene-l Government upon the State Governments? The Constitution gives to Congress the power to "provide for organizing, arming, and disciplining the militia," and "for calling them forth to execute the laws of the Jnion, to suppress insurrections, and to repel invasions;" but, expressly reserves to the States "the ap-pointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." Here, then, we find the General Governnent made dependent upon the States for the efficien exercise of a vital power, connected with the peace and safety of the nation; for, what is your militia without officers and without training? So, likewise, in relation to another power of Congress, which has been the subch commentary, in the course of this debate. -I allude to the subject of fortifications, arsenals, &c Amid the various constructions which have been put upon the clause of the Constitution relating to this subect, all have agreed that the exclusive jurisdiction it gives over the sites of these works, cannot be exercise without the consent of the Legislatures of the States in which they are located. Here, then, we have another example of the dependence of the General Governmen upon the State Governments, in a point belonging to one f its highest trusts, the care of the "common defence." Whether, therefore, I look to the general aim and scope of the Constitution, or to its particular provisions, I cannot acquiesce in the principle assumed by the honorable Speaker. The application of this principle to the sub-ject of the present discussion, has not been clearly de-veloped, but I presume it is this. If roads and canals are necessary to the legitimate operations of the General Government, that Government, being wholly indepen-dent of any intrinsic aid in the prosecution of its lawful objects, may make roads and canals for itself, whenever, and wherever it chooses. I shall hereafter endeavor to show, that, although roads and canals may be essential to some of the purposes of the General Government, yet, they are such facilities as would naturally arise in the progress of society, under the care of the State Governents, and that there was, therefore, no necessity to invest the General Government with authority to create them. Any construction which loses sight of the existence of the State Governments, and of the important purposes they were intended to fulfil, in reference to the affairs of the Union, as well as the interests of the respective States, is incompatible with the nature of our political system, and necessarily leads us into

There were some other general principles laid down in the course of this discussion, the bearing and application of which, to the question under consideration, I
could not very distinctly discern. I notice them, therefore, only for the purpose of entering my protest against
them. An honorable gentleman from New York, (Mr.
Storrs) asserted that the General Government was a municipal, or in other words a National Government, as contradistinguished from a Federal Government. I would
ask that gentleman who were the parties to the formation of this Government? Were they the people of the
United States, as composing one entire nation, or as divided into distinct political communities? Unquestionably the latter. It required too, for its establishment, tionably the latter. It required too, for its establishment, not the consent of a majority of the people, merely, but the unanimous ratification of all the States who became parties to it. In the mode provided for its amendment, also, the concurrence of three-fourths of the States is necessary to any alteration of its principles, without regard to individual members. These circumstances

In another important relation, the only one involved in this discussion—the extent of its powers—it is decidedly Federal and not National. The authority to which branch of the subject, (the Federalist) says, it is of the essence of a National Government to possess a supreme indefinite power over all persons and things, so far as they are the objects of lawful government. But the power of this Government is, by unversal acknowdgment, defined, and limited to special objects. By what process, then, has such a Government, distined by so many Federal features, been converted nto a National Government! By a series of refined deductions, which, considering the gentleman's aversion to political metaphysics, does infinite credit to his genius

Having disposed of these preliminary topics, I come now to consider the particular sources in the Constitu-tion from which the alleged power of Congress to make roads and canals have been deduced. The first of these sources is that clause of the Constitution which gives to Congress the power "to establish post offices and post roads," which, it is contended, is an express grant of the power to make post roads. Whatever contempt, therefore, gentleman may have for philological disquisitions, or however little they may seem to befit the dignity of egislative discussion, we are necessarily driven to inquire into the true meaning of the word establish. The Hon. Speaker has defined it thus, "to make firm, to fix, I agree with that gentleman in the first part of his definition, but I am unable to follow him in the ound by which he has skipped from " to make firm, to fix," to the last interpretation " to build," which seems o me to depart very widely from the other meanings scribed to the word. The original and literal import of the word is, unquestionably, to render stable, or 'make of legislation which might become necessary to carry these powers into effect, Congress is in general authorized to do any act which shall be "necessary and proto ascertain. Let us apply it in this sense, which is sanctored to the word is, unquestionably to render stable, or 'make of legislation which might become necessary to carry these powers into effect, Congress is in general authorized to do any act which shall be "necessary and proton the same of the same ioned by the Speaker's definition, to the subject of post There exists in the country a great variety of roads, passing in different directions, and communicat-ing with different points. It is impossible, in the nature of things, that all of them should be used as post roads. The Constitution, therefore, gives to Congress the pow-er to establish, or, according to the terms of the forego-ing definition, to fix, to settle, to ascertain, which of them should be used as post roads, and to give them a legal character as such. But the honorable Speaker con-tends, that the word "establish" implies something more and is used in a creative sense; for examples of which he refers to the expressions "establish justice," and "ordain and establish this Constitution," used in the preamble of that instrument. These examples do not appear to me to be very apposite to the purpose for which they are cited. It has been very properly said, that the preamble of the Constitution, in stating it to be one of the objects of the new government " to establish ustice," could not have meant that justice was to be created by it. Such an use of the term would be little less than sacrilegious. Justice is an abstract principle, an emanation of the divine mind, always and everywhere existing. All that the Constitution could accomplish embody it, to organize tribonals and prescribe forms for its administration, and thus establish, or fix it, on sure and permanent foundations.

The honorable Speaker, however, contends that in one sense, we do create justice-We create, he says, the criminal justice of the country, because we create the crimes, which are prohibited and punished by our laws. But in what sense do we create a crime! We do not create the fact which constitutes the crime, we only

create the legal character which is imposed upon that [Here Mr. CLAY explained. He said there was a distinction between acts which are mala in se, and those which are mala prohibita. As to the latter, they are wrong, only because the legislature has made them so, and in relation to them, therefore, the law creates the

crime.]
Mr. Rives said, this view of the subject was not affect ed by the explanation of the honorable gentleman. As to that class of public wrongs which are called mala prohibita, it is true they are in themselves indifferent, and me crimes only because the legislature makes them so. But what does this prove! It proves only that the legislature creates the legal character or denomination of the fact prohibited, by making that unlawful which was before lawfal; but the legislature does not create the fact itself, to which this new character or denomination s given. That exists independently, and in spite of the aw. This is not only consistent with, but corroborates our explanation of the word "establish," as applied to post roads. Congress, by *establishing* a post roads, gives a new character, a legal attribute to the subject, by making that a post road which was before not a post road; but, in the legitimate exercise of this authority, it can no more create the physical, material road, to which the new character is given, than in the case of a crime it creates the external fact to which a penalty is annexed. The same explanation is equally applicable to the expression, "We the people, in order, &c. do ordain and establish this Constitution." The people certainly did not create the Constitution, in the sense in which it is contended that the word "establish" gives to Congress authority to create post roads. The instrument already It had come from the hands of the convention perfect in all its dimensions, and was submitted to the people for ratification. All that the people did was to establish it, by giving it the sanction of their approba tion, and investing it with a legal and binding character. The same kind of authority is conceded to Congress without hesitation in regard to the establishment of po

But, we are told, triumphantly, that the word establish must mean the same thing, in relation to post roads, that it does in relation to post offices, and that, as to post offices, it certainly means to create, because Congress, in establishing a post office, at a particular place, makes a post office which did 'not exist before. But what is the nature of this creation? Congress declares that a post office shall be kept at a place where there was no post office before. In doing so, it certainly does not create the place at which the post office is established, but gives to that place a privilege and acco-modation which it did not possess before. So Con-gress, in *establishing* a post road, according to what we deem the true interpretation of this power, makes that a post road which was not a post road before, or, in other words, give to a pre-existing road a charter and attribute which did not previously belong to it. The post road is as much created, if gentlemen will insist upon this divine prerogative in the one case, as the pos office in the other, and the creation, I will add, no more extends to the road itself, which is the channel of the ost route, in the one case, than it does to the place which is the scene of the post office, in the other.

The examples relied upon to support the interpreta on which gentlemen have given of the word lish," seems to me, therefore, to fall very far short of heir object. On the contrary, they are not only con sistent with, but furnish apt illustrations of, the sen which we contend it is properly to be understood. The word, in its primitive and most simple sense, means, to render stable, or make firm, and is strictly applicable to natural objects. But it is now more generally applied to intellectual objects, and when so applied, is, of course, used in a figurative sense. Natural objects are established are made firm by means of external support; and, by an obvious analogy, matters of civil and political re-gulation are said to be established or made firm when e give to them the support and sanction of law. this sense, the word is uniformly used in the constitu ion, and all similar instruments, with such modification

which it is applied. If it was intended, as gentlemens allege, to give to Congress the power to make post roads, why was not that power granted in terms which every person would have understood, and about which there could be no controversy? Was the powerty of the language so great, or were the framers of the Constitu-tion so deficient in their knowledge of it, as to have sup-plied no other word fitted to convey the idea? When we speak of the erection of a house, we do not say that such an one has established a house, but that he has built it. If it had been intended to give to Congress the power now claimed for it, why did not the framers of the constitution say, in so many words, that Con gress shall have power to make and construct post roads These words were at hand, and were well adapted to the purpose of conveying such a power. That they or other words of plainly equivalent meaning, were no used, is evidence that the power they import was not in ended to be given. It was not necessary to the nature and object of thi

grant that Congress should possess the power to make The object of the grant was the conveypost roads. nce of the mail, and the transmission of intelligence through the country. It never could have been con-templated that intelligence should be transmitted to an nsettled country, where there were no persons to re ceive it. But, as soon as a country becomes, settled oads necessarily exist. The great interests of society the operations of commerce, and the convenience of private intercourse, necessarily gives rise to them; and as the population and demands for intelligence increase—the facilities of communication increase also The same roads which answer the ordinary purpose of society, would certainly suffice for the object of transporting the mail. It never could have been intended, in reference to such an object, to confer upon Congress the disproportionate power of opening states. Whether, therefore, I look to the language of the constitution, or to the policy of its provisions, relation to this subject, I am alike constrained to discard the construction which claims for congress the power in question, under the clause we have been consider

The next source which the advocates of the bill have appealed to for the authority to execute a system of in-ternal improvements, is, the military power of the go-The authority claimed un constitution extends to canals as well as roads. not, however, like the authority asserted in relation to post roads, claimed as an express power, but only as an incidental power, or means of carrying another power into effect. The first inquiry which presents itself, therefore, is, as to the true nature and extent of incidental powers. It must never be forgotten that this go vernment is one of limited and defined powers. How ever ready gentlemen are to admit this proposition when their assent is distinctly challenged to it, they seem habitually to lose sight of it in their reasoning upon constitutional questions. All the powers grante to the government are enumerated in the constitution but, as it was impossible to foresee every individual ac per" for carrying the granted powers into execution, but none other. If we depart from this limit, we at once change the character of the government, as pos sessing special and defined powers only, and convert it into one of general discretionary authority. Whenever any measure is proposed, therefore, the first question to be asked is, Is the authority to adopt it expressly grant ed in the constitution? If it be not, the next question is, Is it a necessary and proper means of carrying into execution any power which is expressly granted ! is not pretended that the authority to make roads and canals for military purposes is expressly granted to Congress, is it, then, a necessary and proper means for carrying into execution the military powers which are granted? I will not deny that roads and canals are useful, or, if you please, necessary, to the military ope rations of the government. But this is not the true question. The real point of inquiry is, Is it necessary to the military operations of the government that Congress should possess the power to make them? Roads and canals would exist from the influence of other causes, without invoking the agency of Congress.-They are, as already suggested, the natural and invariable accompaniments of population, in every country. The wants and enterprise of individuals, the common nterests of society, and the paternal care of the State governments, which are more particularly charged with e domestic police of the country, would bring them into existence. The same causes would ensure their multiplication and improvement. As the country improved in wealth and population, the means of communication would improve with it. The members of the Convention, as men ordinarily conversant, at least, with

things, and could not have deemed it necessary to give to Congress the power of creating channels of commu would certainly grow out of the wants of society and the beneficent superintendence of the State governments. All that was necessary, was to give to the general government the right of using these highways, in prosecuting its military and other lawful operations, and this right is conceded to it in the fullest extent. Will any gentleman deny that food and clothing are as necessary for the subsistence of the soldier as roads for him to march upon? And yet, it will not be contended that Congress has authority to condemn and occupy large portions of the territory of the States for farms to produce the one, or factories to supply the other. Why? Because the natural wants of society furnish the best security that these articles will be pro duced, and render it necessary to invest the government with any authority for the purpose. But it is said that, in the defence of the country, and the military operations connected with it, other and better channels of communication would be required than those already existing under the authority of the States. Let us pause, see to what extent this idea would carry us. have an extensive frontier, and are exposed to attack on every side of it. On the Atlantic coast we are expose to the hostilities of any European power, and, throug the incursions of our British, Spanish, and Indian neigh bors. If we undertake a system of roads and canals with a view to facilitate the operations of war, as it is uncertain in what quarter we shall be assailed, we mus extend them to every point of our frontier. The whol face of our territory would thus be covered with militar roads and canals. Is not this a solecism in legislation Military roads and canals, which would be used fo civil and commercial purposes more than a thousand times for once that they would be applied to military purposes! Whether they would ever be used, indeed, for military purposes, would depend upon remote and dubious contingencies, the occurrence of which no man

But leaving this view of the subject, and returning to the principles first laid down, as to the just extense of the incidental powers of the government, I ask if it be possible to justify the measure proposed, by the application of these principles. A national sysf roads and canals, under the exclusive patron age of Congress, cannot, in any sense of the term be said to be necessary to the making and prosecuting of war. Wars have been made and prosecuted successfully prosecuted, without any such sys-All that can be said of it is, that it might have a tendency to give greater effect and increased energy to the exertion of the national force, in time of But, if the power to declare war authorizes Congress to do every thing which may have a tendency to add to the strength and resources of the na-tion, in a military point of view, then, there is nothing connected with the "general welfate," which Congress may not do; for, whatever advances the interests of learning, of manufactures, of agriculture, of commerce, or, in any manner promotes the internal prosperity of the country, certainly has a tendency to increase its strength, in a conflict with a foreign country. A principle of construction, leading to such consequences, cannot be maintained.—
The honorable Speaker expressed his acquiescence in the principles asserted by Virginia, in '98. Those principles were embalmed and immortalized in the celebrated report of Mr. Madison, which has been mentioned in the course of this debate. The principles contained in that report, do not derive their sanction from the great name alone with which the are associated. They received a still higher sanc tion—that of the American people. For, it was the potent influence of these very principles, which civil revolution of 1801. If any writings, therefore, can be fairly appealed to, as authority, in constitutional discussion, it is this report. [Here, Mr. Rives read extracts from "Madison's report."] The simple criterion, then, is this—the measure sought to be adopted, as incidental to an express power, must have an "immediate and appropriate relation to that power, as a means necessary and proper for carrying it into execution. "A tendency merely, in the measure to promote an object, for which Congress is authorized to provide," does not justify its adoption. Now, does not all that has been said, and can be said in favor of a national system of reads and can be said in favor of a national system of reads and can be said in favor of a national system of reads and can be said in favor of a national system of reads and can be said in favor of a national system of reads and can be said in favor of a national system of reads and the power to prevent them, implies the power to prevent them, and the power to prevent them, implies the power to prevent them, and the power to prevent them, and the power to prevent them, implies the power to prevent them, implies the power to prevent them, and the p be said, in favor of a national system of roads and canals, amount to this-that they would have a tendency to promote or facilitate the operations of warnot that they have an immediate and appropriate relation to the power of making war-as means, necessary and proper, for carrying that power into execution. One of my colleagues (Mr. J. S. Barbour,) adverted to this rule for the deduction of incidental powers, and seemed to think it too rigid, because, he said, it excludes a choice of means. exclude a choice of means: it only limits that choice. And permit me to say, that, in order to preserve the true character of this government, it is as necessary to timit the means of executing its powers, as to limit the powers themselves; for in the language of the distinguished authority which I have just quoted, "it is wholly immaterial whether unlimited powers

the name of unlimited means of carrying limited powers into execution." But, we have been gravely told, that roads and canals are fortifications. Why, sir, a lively imagina-tion, and an ardent zeal, may convert any thing into fortifications. It may be said, with as much justice, and as little violence of metaphor, that the hearts of our people are fortifications: for, after all, the moral energies of a nation are as important to its defence, as physical works of any sort. As a part, then, of this system of military defence, we must establish schools and colleges, to imbue the minds of our youth with the love of liberty, a knowledge of the principles of our free institutions, and a loyal and patriotic devotion to their country! In like manner granaries of the farmer are fortifications-the they furnish the indispensable means of subsistence to the troops who are to defend you. Thus, by the magic influence of language, Congress, in the great interests of society-its education, its agricul-

be exercised in the name of unlimited powers, or in

It has been triumphantly asked, if Congress can erect forts and dock-yards, may they not make roads to go into them? Unquestionably, the right to erect these works, necessarily implies the right of way, by which a communication is to be had with them. If there be no road leading to them, the governing a road for the purpose of communication. But this, it woul what is the road, in this case? It is strictly an appurtenance to the fort or dock-yard, and is confined provements, having no actual connection with any military work, nor bearing any peculiar and appro priate relation to military operations. There can be no doubt that the General Government has a right passage through the territory of the states for any its lawful purposes, and it may, therefore, in time war, open a military road, when it is necessary to the accomplishment of any particular military movement. In such a case, it has a right to a passage; and there can be no passage without a road. road is then made, and used pro hac vice only, and as soon as the passage is effected, all property in, or jurisdiction over it, ceases and dies. The right strictly commences, and terminates with the occasion of its exercise. This case, therefore, affords no countenance to a claim of a general power to execute and maintain a permanent system of internal imingencies, which may never occur. In the view it material to inquire into the right which has been claimed by the general government of possessing itself of the soil of the states, when it is necessary to the execution of any of its powers. It is admitted by all that it cannot do so, except in cases where it is necessary to the execution of some of its powers. In each particular case, therefore, the question re-curs, Is the proposed occupation of the soil of the states necessary to the execution of any of the powers of the government? My object has been, to show that the occupation of it, for the purpose of making roads and canals, is not necessary to the execution of the military power of the government, and cannot be justified by any sound doctrines of constitutional

consideration, upon which the authority of this government, to make roads and canals has been asserted, is that portion of the Constitution which gives to Congress the power "to regulate commerce among the several States." The honorable gentle-

man from Delaware, (Mr. McLane,) seemed treat this as a question of incidental power, but it strictly and exclusively a question of express power The whole controversy depends upon the true import of the word "regulate." If to "regulate," means to "promote" or to "facilitate," then the power to make roads and canals, as an ordinary and natural mode of facilitating or promoting commerce, seems to be clearly comprehended in the terms of the grant. If, however, to regulate, means to make rules, as it certainly does, in the plain and common ise of the word, then it gives to Congress no other power than that of making the rules, or prescribing the terms, upon which commerce among the States shall be conducted—that is, the power of making commercial regulations, as applicable to the recipro-cal trade of the States. But, would any person call roads and canals commercial regulations? The whole question, then, might be safely left to an unsophisticated common sense interpretation of the lan-guage of the Constitution; but, as the argument of he gentleman from Delaware was certainly an original and ingenious one, I beg leave to analyse and examine it more particularly. The outline of the argument was this: that the object of granting to Congument was this: that the object of granting to Con-gress the power of regulating commerce among the States was not, as had been supposed, to prevent one State from laying burthens on the productions of another State, passing through its jurisdiction, (that object being adequately provided for by another, clause of the Constitution,) but to prevent a greater mischief, absolute prohibitions of the passage, which if they should occur, it would be competent for Congress, under this power to remove; that, if Con-gress can remove legal restraints upon the trade of the States, it can remove physical obstructions; and, if it can remove physical obstructions to the trade of the States, it can create new channels for it. How-ever nicely concatenated this chain of deductions eems to be, I shall endeavor to show that some of its links are too feebly connected to sustain the conclusion which depends upon it. The gentleman's first position is, that the power to regulate commerce mong the States, was not given to Congress to pre vent one State from imposing duties on the produ tions of another, passing through its jurisdiction, be cause, if this were the only object, the power would cause, it this were the only object, the power would be nugatory, another clause of the Constitution hav-ing expressly restrained the States from laying duties on imports or exports. In relation to this po-sition, I will only remark, that the honorable gentleman seems to have mistaken the purpose for which the passage in the Federalist upon this subject was read, by my able colleague, (P. P. Barbour,) who opened this discussion. That purpose was not to show, nor does the authority cited import, that the only object of the power in question was to prevent the States from imposing duties on the productions of each other, passing through their respective jurisdictions. It was mentioned merely as one of the objects of the power. A farther object, undoubtedly was, as the gentleman himself has satisfactorily shown, to prevent arbitrary interruptions of the trad of the States, arising from acts of positive prohibition and other similar impediments. But the gen tleman is not satisfied even with this extension of the power. He says that a power of such apparen agnitude could not have been intended to be pas sive-a monument of its own insignificance-and that if it extends to removing no other obstacles than such as may be interposed by adverse and unfriend-ly legislation of the States, it becomes utterly passive. Why, sir, it is, in this respect, like many other powers granted by the Constitution. The powers to "repel invasions" and to "suppress insurrections," are passive, until the proper occasions occur to bring them into action. And the honorable gentleman potent influence of these very principles, which wrought, by the voice of the people, that change of men and measures, in the administration of the government, which has been emphatically styled, The civil revolution of 1801. If any writings, therefore, can be fairly appealed to, as authority, in constitution.

In m into action. And the nonorable gentleman will permit me to remind him that this very horror of passive authority, acting upon one of the powers just mentioned, was the parent of the sedition law. The reasoning was this—the power to prevent them, and the power to prevent them, implies the power to

zes Congress to remove legislative restraints, imposed by one state upon the trade of another, passing through its jurisdiction. The power to remove legislative restraints, implies the power to remove natural obstructions, and the power to remove natural obstructions, implies a power to give artificial facilities; or, in other words, to make roads and canals. But, it is true, that the power to remove legislative restraints implies the power to remove natural obstructions, and to give artificial facilities? The one aims only to protect commerce in its actual channels: the other seeks to open additional channels for commerce. The object of the former is merely to secure the free use of existing highways; the effort of the latter, is to create and construct new highways. These things are, in their natures, so essentially distinct, that an inference from one to the other, is wholly arbitrary and inadmissible. honorable gentleman from Delaware need not be airaid that this power will remain passive, unless it is exerted n giving artificial facilities to trade. It has already been exerted, and copiously exerted, in the various and minute regulations connected with the coasting trade and this was probably the chief, if not the only, employment of it, contemplated by the framers of the

Constitution. The gentleman read a passage from Vattel, for the purpose of proving the connection between good roads and canals, and the welfare of trade. But nothing is gained by this position, which is very readily admitted intil it is also proved that Congress has a general power to promote the welfare of trade. The application of as authority, therefore, proceeds upon an assumption of the very point in dispute. A similar defect exists in workshops of the mechanic are fortifications—for the argument which claims for the general government the same authority to make roads and canals between the states, that the government of each state has to make roads and canals within its own limits. The state exercise of its military functions, may invest itself governments have, undoubtedly, the right to make roads with a general and unlimited patronage of all the and canals within their respective limits; but from what does this right result? From the general discretionary power which the state governments possess, to provide for the public welfare. Before the argument can be sustained, then, it must be shown that the general government possesses a like discretionary power, to pr vide for the public welfare. The state governments do not make roads and canals by virtue of a specific power to regulate commerce among the several portions of the ment may render its right of way effectual, by open- same state. If they possessed no other power than this, it would not be competent for them to make roads

Much reliance has been placed, by the gentleman to the purpose of communication with it. It is a thing wholly distinct from a system of internal imparticipated in this discussion, upon what is said to have been the practical construction of the power to "regulate foreign commerce." It is contended that Congress possesses the same power in relation to "commerce among the several states," that it does in rela-tion to "foreign commerce:" and that, as, under the power of regulating foreign commerce, it has erected ight houses, beacons, buoys, &c. with a view to give safety and facility to that commerce, it may, under the power of "regulating commerce among the states," construct roads and canals, to give safety and facility to the internal trade of the country, I beg leave to ask those gentlemen, by what authority they refer the erection of the light houses, beacons. &c. to the power to regulate foreign commerce? There is no evidence upon the face of the laws themselves, which were passed for their erection, that Congress legislated under the idea that they derived the right to erect them from the power to regulate foreign commerce. There is collateral evidence, however, that they legislated with reference to another clause of the Constitution. It was mentioned by my colleague, who opened this discussion, ist of cessions made by the several states, of the sites of these buildings. The only cases in which the Constitution requires the previous consent of the states to the alienation of territory, are those relating to the sea of government, and all such places as may be acquired for the "erection of forts, dock yards, &c. and other needful buildings." It would seem, therefore, from the formal cessions made by the states, of the sites for light-houses, &c. that Congress legislated with reference to this part of the Constitution. Another explanation has been suggested, by an honorable gentleman from New York, (Mr. Wood.) who refers the erection of these buildings to the power to lay and collect duties. The duties laid, accrue only upon the arrival in our ports

of light-houses, beacons, &c. can be accounted for have been accounted for, plausibly at least, with ferring them to the power of regulating foreign merce. It is not necessary for me to decide what clause of the Constitution these buildings erected. I will only say, that both of the explangust mentioned are as satisfactory to my min the one which refers them to the power of regulationing commerce. Gentlemen have taken it for grawithout offering to prove, that they were expected. without offering to proce, that they were erected un this clause of the Constitution, for the sake, I presure of the precedent it would afford them, in the interpreof the precedent it would should the states tion of the power to regulate commerce among the states.

I beg leave, however, to say, that, whatever may be stated the states of the state

have been the construction of the constitution under which these lighthouses were built, or any other act

which these lighthouses were built, or any other act that has been done by preceding Congresses, I cannot regard such construction as legitimate and conclusive evidence of the true meaning of the constitution, and binding upon ourselves and our successors. The gentleman from Delaware said it was a great error to consider the authority to make roads and canals as a distinct, instead of a subsidiary power If any power, from its magnitude and extent, ought to be regarded as a distinct and independent power, it is this. The constitution has granted, by distinct clauses, several other powers which might, with much more propriety, have been regarded as subsidiary powers, and left to implication. What would seem more naturally to appertain to the regulation of commerce among the States than the power of coining money, the very instrument of commerce, of fixing its value, of establishing a common standard of weights and measures, uniform laws on the subject of bankrupicy, and post offices and post roads? of weights and measures, uniform laws on the subject of bankrupicy, and post offices and post roads? Yet, all these powers are the subjects of express and distinct grants! What could more properly be considered as incidental to the power of declaring war than to raise and support armies, provide and maintain a navy, make rules for the government of the land and naval forces? And yet it was thought necessary to give these and other similar powers by direct and explicit declarations in the constitution! It will not be said that roads and canals bear a more direct and immediate relation to the military and commercial powers of the Government, or are and commercial powers of the Government, or are of less dignity and importance in their character, than many of the powers just enumerated. Why, then, I will ask the gentleman from Delaware, if the power to make them was intended to be given, was it not, in like manner, distinctly granted?

In inquiries of this sort, Mr. Chairman, the opinions of no man, however illustrious by his virtue or his wis-

dom, ought to preclude the exercise of our own deliberare judgments. There is, however, a degree of respect which all acknowledge to be due to the opinions of the distinguished men who either participated in the formation of our government, or have since borne a conspicuous part in its administration. It is known to the committee that three successive Presidents of the United States have felt it their duty to announce to Congress, in the most solemn form, their settled conviction that this government does not possess the power now in question. I will not, however, insist upon their testi-mony, because they are Virginians, and we have abundant evidence that Virginia politics have gone out of favor. There is an authority, however, which I will quote, and the weight of which I feel myself entitled to press upon this committee. It is that of Alexander Hamilton. His opinions upon this subject are of pecu-liar value, not only because he was a member of the ltar value, not only because he was a member of the convention weich framed the constitution, and one of the authors of the celebrated commentary upof the authors of the celebrated commentary upon its principles, but because he isknown to have indulged a strong bias in favor of the powers of the general government, and to have adopted the most liberal doctrines in their interpretation. Yet, even Mr. Hamilton, with all his leaning towards federal authority, could find no warrant in the constitution for the power to make roads and canals. In his Report on Manufactures, after speaking of the importance of roads and canals to the prosperity of manufactures, and mentioning several reasons why it is desirable that the general government should possess the authority to make ral government should possess the authority to make them, he concludes by saying, these circumstances "render it a wish of patriotism" that the general government "were at liberty to pursue and promote the general interest" by adopting a national system of inter-nal improvements. Here, then, we have an unequivo-cal admission that the general government is not now "at liberty" to adopt this system—an admission the more precious, because it is evidently made with great In answer to a remark made by one of my colleagues

(Mr. Archer) that, at the time of the adoption of Constitution, no allusion was made to the existence of such a power as is now claimed, a gentleman from New York (Mr. Storrs) mentioned an amendment to the Coustitution which was proposed by a Mr. Jones in the convention of that State, the substance of which was, that the power to establish post roads should not be construed to extend to the making, laying out, and repairing of roads, in the several States, without their consen evidence of Mr. Jones' opinion, that Congress possessed the power to make roads under the clause of the Con stitution referred to. All that it proves is, that Mr. Jones appehended that this clause might hereafter be construed to give to Congress the power to make roads, and that he wished, in such an event, to render its exercise as innocent as possible, by requiring the previous consent of the States in which the roads should be laid out. The very first of the actual amendments to the Constitution declares that "Congress shall make no law restraining the free exercise of religion, abridging the freedom of speech, or of the press, or the right of ioning." Is it to be inferred from this amendment that, without it, Congress could lawfully have done the things inhibited by it ? I presume not. The truth is, that this and several other amendments arose from a spirit of jealous caution, and an apprehension of future encroachment from the General Government, and furnish no evidence of the opinions entertained of the real extent of the powers granted. But, whatever may have been the opinion of Mr.

Jones, I may be permitted to oppose to it the authority of Patrick Henry, who, in the debates of the Virginia convention, after depicting in the most glowing colors what he deemed the vast powers of the General Government, and the dangers of con-solidation, concluded by saying, "all that is left to the States is, to take care of the poor, make and re-pair highways, erect bridges," &c. Even this jealous guardian of State rights, who descried the remotest dangers which threatened the safety of our republican institutions, and "snuffed the approach of ty-ranny in every tainted breeze," even he, while he believed that every other power was swallowed up by the General Government, was satisfied that this portion of sovereignty, at least, was left entire to the States. And, if he could have foreseen the attempt which is now made to appropriate to the General Government this portion of State sovereignty, none would have alarmed him more, for none is more directly calculated to lead to consolidation. It is a power which comes home to the business and bosom of the people; it approaches their firesides, and touches their most intimate domestic interests. If the inhabitants of the States, instead of looking to their governments at home, are to look to the general government, (as they certainly will, if this system should be adopted,) for the ordinary facilities of travelling and transportation, then the State governments become useless machines, and are not worth the expense of maintaining. You supersede them in the exercise of their most appropriate functions, and dissolve the strongest tie which connects them with the people of the States. What, then, becomes of the boasted equilibrium of our system, which has always been regarded as the best preservative of our liberties? It is gone: it is doubly gone. You destroy it, not only by taking away, in effect, an important power from the State governments, but by delivering the same power, with an increased mass of nationages and find the same power. of patrenage and of influence, into the hands of the

MR. TUCKER'S

Report, in part, of the Committee of the House of Representatives of the United States, on so much of the President's Message, as relates to roads, canals, and seminaries of learning.

DECEMBER 15, 1817. Read and committed to a committee of the whole house on Friday next.

The committee to whom were referred so much of the President's message as relates to roads, canals, and seminaries of learning, respectfully report, in part, that they have taken into consideration the subect referred to them, and bestowed on it that attention to which, by its importance, it is so eminently entitled. Involving, as it is supposed, a great consti-tutional question on the one hand, and intimately connected, on the other, with the improvement, the prosperity, the union, and the happiness of the United States, it presents the fairest claims to candid and diligent investigation. Nor is it without additional interest from the division of opinion to which it has heretofore given rise between the Executive and Legislative branches of the government; a difference, which in the indulgence of the rights of free opinion, will be still found to exist between the sentiments pro-mulgated in the message of the President, and those which will be advanced by your committee in this report; nor do they conceive, that the expression in the message of the President of an opinion unfavora-